STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

AMEREN ILLINOIS COMPANY	)	
d/b/a Ameren Illinois,	)	
Petitioner,	)	Docket No. 16-0262
	)	
Rate MAP-P Modernization Action Plan –	)	
Pricing Annual Update Filing	)	

REPLY BRIEF OF AMEREN ILLINOIS COMPANY

Dated: October 11, 2016

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I. INTRODUCTION

In advocating adjustments to Ameren Illinois' 2015 Ameren Services Company charges, the Illinois Industrial Energy Consumers and Citizens Utility Board (jointly IIEC/CUB) do little more than omit or misstate the law and the record evidence. The Attorney General, in advocating adjustments to AIC's 2015 advertising expenses, employs similar tactics, but also offers new argument that the AG could have, but did not, raise in rebuttal testimony.

The Commission should not be misled by these intervenors' initial briefs. As AIC explained in its initial brief and explains again here, the substantial weight of the record evidence and the law support recovery of all of the costs included in AIC's proposed net revenue requirement, including AIC's 2015 AMS charges and advertising expenses. Staff and AIC agree regarding AIC's proposed net revenue requirement. The Commission, therefore, should reject intervenors' meritless adjustments and approve AIC's proposed net revenue requirement.

II. OPERATING REVENUES AND EXPENSES

A. Contested Issues

1. Ameren Services Company Charges

In its initial brief, IIEC/CUB proposes only two adjustments to AIC's 2015 AMS charges. IIEC/CUB maintains that with these adjustments, AIC's remaining AMS costs are at a "reasonable level." Much of IIEC/CUB's wide ranging discussion on AIC's AMS charges in brief, however, goes well beyond the two adjustments. That discussion is, therefore, irrelevant. The only real issues in dispute are the two adjustments which, as AIC's initial brief highlights, are factually unsupported and fail legally.

The Commission should consider IIEC/CUB's initial brief on AMS charges with heightened skepticism. The brief makes bold statements about the lack of record evidence that are wrong and irrelevant; there is substantial evidence to support the reasonableness of AIC's

2015 AMS charges. The brief misstates IIEC/CUB's legal burden; IIEC/CUB must state its objections with particularity and support them with evidence. The brief obscures the fact that IIEC/CUB's witness, Mr. Gorman, had data that he could have used to analyze AMS costs in a number of ways, but he failed to use it. The brief is plagued with mischaracterizations of the record evidence, including of AIC's benchmarking analyses demonstrating that AIC's Administrative and General expenses are consistently lower than the expenses of AIC's utility peers.

What is left is rhetoric, but mere rhetoric is not enough to support an adjustment. The Commission must base its decision on the record evidence. And, as AIC explained in initial brief, the record evidence demonstrates that all of AIC's 2015 AMS charges, including a 3.5% increase over the 2014 cost level, are prudent and reasonable. Thus, the Commission should find that the full amount of those AMS charges is recoverable.

a. IIEC/CUB proposes only two AMS cost adjustments, and both are without merit.

In its initial brief, IIEC/CUB advocates the two adjustments (or one two-part adjustment) to AIC's 2015 AMS charges proposed by its witness, Mr. Gorman. Both adjustments relate to the total AMS costs allocated to AIC and its affiliates.

First, IIEC/CUB proposes to reverse what it erroneously believes is a shift in total allocated AMS costs from Ameren Corporation in 2014 to AIC in 2015. (IIEC/CUB Init. Br. at 6 ("Mr. Gorman's [sic] proposed a reduction in AMS costs for AIC to reverse the declining allocation of AMS cost to Ameren Corporation . . . .); IIEC/CUB Ex. 1.0 (Rev.) at 3, 5-6.)

Second, IIEC/CUB proposes to increase the percentage of total AMS costs allocated to Ameren Transmission Company (ATC) in 2015, thus decreasing the percentage allocated to AIC. (IIEC/CUB Init. Br. at 8 ("Mr. Gorman proposes to increase the percentage of AMS cost charged to ATC to at least 10% for any cost functions for which Mr. Gorman found that ATC is not receiving a sufficient allocation of AMS cost.")[1]; IIEC/CUB Ex. 1.0 (Rev.) at 3, 7-8.)

Together, the adjustments would reduce the $73 million of AMS charges included as operating expenses in AIC's net revenue requirement by $6.4 million.[2] (IIEC/CUB Ex. 2.2 (CP); IIEC/CUB Ex. 2.9 (CP) (AIC's response to IIEC-CUB 2.07).) This, IIEC/CUB argues, would "bring the amount of AMS cost charged to AIC to a reasonable level." (IIEC/CUB Init. Br. at 9.) In effect, IIEC/CUB concedes that the $66.6 million of AMS charges that IIEC/CUB does not propose to adjust is prudent and reasonable.

IIEC/CUB's arguments in initial brief on AIC's 2015 AMS charges, however, go beyond IIEC/CUB's two adjustments—placing AIC in the unfortunate position of having to rebut myriad irrelevant allegations. Despite this, the Commission should not lose sight that IIEC/CUB proposes only two adjustments, both are related to total AMS costs allocated to AIC and its affiliates—and both are without merit.

i. No AMS costs "shifted" from Ameren Corporation.

As AIC explained in initial brief and as the record evidence demonstrates, AMS charges to AIC increased from 2014 to 2015 due to inflation, annual increases in AMS employees' salaries and wages, and changes in AIC's business needs in 2015, including maintaining AIC's books and records and increased Information Technology (IT) support. (AIC Init. Br. at 13-14.)

Separately, AMS charges to Ameren Corporation decreased from 2014 to 2015, due to

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[1] In its initial brief, IIEC/CUB designates this quoted text, which relies on Mr. Gorman's Confidential revised direct testimony, as Confidential. AIC, however, does not consider this particular text Confidential, and has not treated it as such. (*See* Ameren Ex. 12.0 at 9-10 (responding to and rephrasing Mr. Gorman's direct testimony on this point).)

[2] AIC's proposed revenue requirement includes $75 million of expensed and capitalized AMS charges, with $73 million representing the expensed portion of the charges. (IIEC/CUB Ex. 2.9 (CP) (AIC's response to IIEC-CUB 2.07).) As explained in AIC's initial brief, the two adjustments proposed by IIEC/CUB's witness, Mr. Gorman, would reduce AIC's proposed revenue requirement by $6.6 million. (AIC Init. Br. at 3.)

changes in Ameren Corporation's business needs. Specifically, in 2014, AMS directly charged Ameren Corporation $7.3 million for non-labor (*e.g.,* outsourced) services related to Ameren Corporation's 2013-2014 merchant generation business divestiture. (*Id*. at 15-17.) In 2015, direct charges for the same services decreased to $143,000. (*Id*.)

The unrebutted evidence shows that the decrease in AMS costs charged to Ameren Corporation and the increase in AMS charges to AIC were mutually exclusive. (Ameren Ex. 12.0 at 8.) AMS's divestiture-specific non-labor services costs to Ameren Corporation were not, and could not be, "reallocate[d]," as IIEC/CUB charges (IIEC/CUB Init. Br. at 7), because those services are no longer performed. (Ameren Ex. 15.0 (Rev.) (CP) at 19.)

ii. IIEC/CUB's adjustment related to Ameren Corporation also fails EIMA's requirements for adjustments.

In its initial brief, AIC explained why IIEC/CUB's adjustment related to Ameren Corporation charges is factually unsupported and therefore legally baseless. (AIC Init. Br. at 5-12, 15-17.) EIMA requires IIEC/CUB to state its objections to AIC's 2015 costs "with particularity" and to provide "evidence . . . in support thereof." 220 ILCS 5/16-108.5(d)(3); (AIC Init. Br. at 6-7). Neither normalization of a cost incurred in a prior period nor the fact that a cost differed from a cost in a prior period may alone serve as that evidence. 220 ILCS 5/16-108.5(d)(3), (c)(1); (AIC Init. Br. at 9). IIEC/CUB's initial brief fails to even acknowledge these limitations, and its Ameren Corporation related adjustment contravenes them.

Initially, IIEC/CUB concedes that the sole basis for the adjustment is this: "AIC's AMS cost has continued to increase, [while] the amount of AMS cost allocated to AIC's parent, Ameren Corporation, has concurrently decreased." (IIEC/CUB Init. Br. at 6.) Although the difference in AMS cost levels year over year, legally, cannot (and does not) constitute evidence of imprudence or unreasonableness of the costs, 220 ILCS 5/16-108.5(c)(1), IIEC/CUB offers nothing else. And, although IIEC/CUB must state its objections "with particularity," 220 ILCS 5/16-108.5(d)(3), IIEC/CUB does not identify any particular AMS service or cost that "shifted" from Ameren Corporation to AIC in 2015, any particular AMS service that AIC should not have received or that Ameren Corporation should have received in 2015, or any particular AMS cost charged to either company that is unreasonable in amount. (*See* generally IIEC/CUB Init. Br. at 6-7; Ameren Ex. 12.0 at 3, 6.)

Instead, IIEC/CUB's only argument is that "[w]hile the actual services provided by AMS to Ameren Corporation in 2015 may have gone away, the actual AMS cost did not, since both total AMS costs and the amount charged to AIC continue to increase." (IIEC/CUB Init. Br. at 7.) The conclusion that "the actual AMS cost did not [go away]," however, is based on no particular fact, or even logic. It simply reflects IIEC/CUB's (and its witness Mr. Gorman's) misunderstanding of how the Commission-approved General Services Agreement (GSA) allocates AMS costs to affiliates. (*See* AIC Init. Br. at 15-16.)

Finally, IIEC/CUB readily concedes that its Ameren Corporation adjustment normalizes AMS costs charged to Ameren Corporation to the level in the prior, divestiture period: "Mr. Gorman's [sic] proposed a reduction in AMS costs for AIC to reverse the declining allocation of AMS cost to Ameren Corporation by reflecting the 2013 level of AMS cost allocated to Ameren Corporation." (IIEC/CUB Init. Br. at 6-7.) IIEC/CUB never explains why the 2013 cost level is appropriate for 2015. It's not. (*See generally* Ameren Exs. 12.0; 15.0 (Rev.) (CP).) Regardless, EIMA does not favor normalization adjustments, because EIMA uses actual costs to reset rates each year. This eliminates any need for costs to be adjusted to some subjectively determined "normalized" level or amount. 220 ILCS 5/16-108.5(d)(3).

Nothing about IIEC/CUB's adjustment related to Ameren Corporation's AMS charges withstands the legal burdens that EIMA imposes on IIEC/CUB, as IIEC/CUB's initial brief highlights. This failure makes responding to that adjustment a challenge. AIC fully rebutted it anyway. (*See* AIC Init. Br. 12-13.)

iii. AMS costs were not under-allocated to ATC in 2015.

AIC also explained in initial brief why AMS costs allocated to AIC and ATC in 2015, including AMS IT costs, are consistent with the GSA and are reasonable, and why Mr. Gorman's related adjustment should be rejected. (Ameren Init. Br. at 5-12; 17-19). Put simply, AIC and ATC have different business needs, so it makes sense that they would be allocated different levels of AMS costs. (*Id.* at 17-19.)

iv. IIEC/CUB's adjustments related to ATC also fails EIMA's requirements for adjustments.

IIEC/CUB asserts that "Mr. Gorman proposes to increase the percentage of AMS cost charged to ATC to at least 10% for any cost functions for which Mr. Gorman found that ATC is not receiving a sufficient allocation of AMS cost. Mr. Gorman believes this is a reasonable allocation of cost *absent a showing that a different allocation is prudent and reasonable*."[3] (IIEC/CUB Init. Br. at 8 (emphasis added).) Under EIMA, however, it is incumbent upon *IIEC/CUB* to make the requisite showing—to state its 10% adjustment "with particularity" and to support it with evidence. 220 ILCS 5/16-108.5(d)(3); (AIC Init. Br. at 9.)

This is something that IIEC/CUB did not do. While IIEC/CUB repeatedly states that the basis for its adjustment related to ATC is Mr. Gorman's "examination"[4] of AMS charges, including AMS IT charges, to ATC in 2015 (IIEC/CUB Init. Br. at 8), Mr. Gorman admitted that he did not analyze any transactions between AMS and ATC (Ameren Ex. 15.0 (Rev.) (CP) at

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[3] *See supra* note 1.
[4] *See supra* note 1.

23). That is, although AIC gave him every AMS charge to AIC and ATC (and other affiliates) in 2015, and specifically every AMS IT charge to AIC and ATC (Ameren Ex. 15.0 (Rev.) (CP) at 6, 7-8), Mr. Gorman admitted that he did not examine that data (Ameren Ex. 15.0 (Rev.) (CP) at 23). Indeed, the AMS cost data provided in this case is extensive. (*See infra* § II.A.1.e (listing all the AMS cost data that AIC provided to IIEC/CUB in discovery).)

What Mr. Gorman *did not* do to examine AMS IT charges to AIC and ATC stands in sharp relief with what Staff *did* do to examine those charges. Staff asked for, and AIC provided: (i) detailed descriptions and explanations of the use of the AMS IT function by AIC and ATC, including the number of PCs used for AIC and ATC tasks (shared versus designated), the number of servers used for AIC and ATC tasks (shared versus designated), the amount of digital storage capacity allocated for AIC and ATC, the amount of digital storage capacity actually used for AIC and ATC, the number of employees for AIC and ATC, and the number of network accounts for AIC and ATC; (ii) explanations of how the costs, calculations, and allocation percentages for the use of the AMS IT function by AIC and ATC; (iii) the allocation factors that were used to charge AMS IT costs to all affiliates in 2015, an explanation of why and how each allocation factor charged an appropriate portion of the IT services costs to each affiliate, and an example of an actual service request to which each allocation factor was applied and an explanation of the basis for choosing that factor; (iv) an explanation of why the relative percentage of total AMS IT costs to AIC and other affiliates is appropriate; and, (v) for each affiliate, the breakdown of their AMS IT charges by direct costs charged and indirect costs charged. (Ameren Ex. 15.0 (Rev.) (CP) at 9.) Staff examined all this information related to AMS IT charges to AIC and ATC in 2015. (*Id*. at 8-9.) Mr. Gorman had this information too. (*Id*. at 9.)

But Staff, unlike Mr. Gorman, proposed no adjustment. (*Id*. at 6.)

As far as AIC can tell, Mr. Gorman's "examination" of AMS IT charges to AIC and ATC really boils down to this supposition: "It is unreasonable to assume that a transmission company can operate without a significant information technology function."[5] (IIEC/CUB Init. Br. at 8.) That supposition, however, does not support the conclusion that it is used to draw—that AMS IT services and cost allocations to ATC are somehow "not sufficient." As AIC explained in initial brief, there is good reason that AIC's AMS IT costs in 2015 were more than ATC's. Namely, AIC's AMS IT needs were greater than ATC's. (*See* AIC Init. Br. at 18.)

Moreover, Mr. Gorman's supposition is insufficient to carry IIEC/CUB's legal burden. Again, EIMA demands that IIEC/CUB state its objections "with particularity" and support them with evidence. 220 ILCS 5/16-108.5(d)(3). As IIEC/CUB's initial brief highlights, this is something IIEC/CUB did not do.

b. IIEC/CUB wrongly claims that AIC has provided "no evidence" on irrelevant topics.

IIEC/CUB opens its initial brief by boldly claiming that AIC has presented "no evidence" on a number of topics, and reiterates that sentiment elsewhere in the brief. (IIEC/CUB Init. Br. at 2.) These topics are not relevant to IIEC/CUB's two adjustments. So, at best, IIEC/CUB's claims grossly mischaracterize the record, and at worst, they attempt to mislead the Commission. Either way, IIEC/CUB's claims are wrong: there is evidence on each topic.

IIEC/CUB claims, for example, that AIC "*does not provide evidence* justifying" the increase in total AMS costs, AMS costs to client companies, and AMS costs included in rates despite the 2013-2014 divestiture of Ameren Corporation's merchant generation business.

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[5] *See supra* note 1.

(IIEC/CUB Init. Br. at 2 (emphasis added).) IIEC/CUB have this wrong. AIC's testimonial evidence and benchmarking analyses (not to mention the surfeit of discovery it provided regarding AMS costs (*see* Ameren Ex. 15.0 (Rev.) (CP) at 6-10); *infra* § II.A.1.e) justify all of AIC's 2015 AMS charges, including the slight 3.5% increase in total AMS costs charged to AIC in 2015 over 2014 due to inflation, annual increases in AMS employees' salaries and wages, and changes to AIC's specific business needs. (Ameren Exs. 12.0 at 4, 8, 12; 15.0 (Rev.) (CP) at 4; AIC Init. Br. at 13-14.) Moreover, AIC provided a detailed variance analysis of 2014 and 2015 AMS costs by FERC account that confirmed, as AIC explained its testimony, that AMS costs charged to AIC increased from 2014 to 2015 largely due to AMS employee wages and salaries increases, increased support for maintaining AIC's general books and records, and increased AMS IT support for cyber security and data operations. (Ameren Exs. 15.0 (Rev.) (CP) at 16; 15.2 (CP).)

IIEC/CUB also claims that AIC did not provide "*any evidence whatsoever* that it could not have obtained any necessary services more economically by providing such services in house or through an independent third party." (IIEC/CUB Init. Br. at 2 (emphasis added).) This is wrong, too. AIC provided benchmarking analyses demonstrating that regardless of their source—whether AIC, an external vendor, or AMS—AIC's administrative and general expenses are consistently lower than its utility peers' administrative and general expenses. (*See generally* Ameren Exs. 13.0, 16.0 (Rev.) (CP); AIC Init. Br. at 14-15.) AIC also provided documentation of its review of AMS services, including consideration of cost containment opportunities and potential savings from further outsourcing, in the form of AIC buyers' 2015 Joint Planning Checklists. (*See* IIEC/CUB Ex. 2.4 (AIC's response to IIEC-CUB 2.08, Attach 1 (2015 Joint

Planning Checklists)).)

IIEC/CUB claims that AIC presented "*no evidence*" that "AMS's charges for any specific service or category of services provided to AIC were prudent and reasonable." (IIEC/CUB Init. Br. at 2 (emphasis added).) Notably, IIEC/CUB's adjustments do not relate to AMS "charges for any specific service or category of services." They relate to total AMS cost allocations to AIC and its affiliates. (*See supra* § II.A.1.a.) And, since IIEC/CUB did not dispute "any specific service or category of services provided to AIC," AIC should not be asked to defend *every* AMS service it received in 2015 and attendant charge it incurred.

Regardless, again, the claim that there is "no evidence" is wrong. AIC provided testimonial evidence, variance analyses, and documentation of its processes for reviewing and receiving AMS services that support the prudence and reasonableness of AIC's 2015 AMS charges. AIC also provided evidence that the 3.5% increase in AMS charges to AIC from 2014 to 2015 was reasonable because it was attributable, in part, to AIC's specific business needs, which required particular AMS services, such as maintaining AIC's books and records and increased IT support for cyber security and Part 280 compliance. (*See* Ameren Exs. 2.0 (Rev.) at 15-16; 12.0 at 4, 8, 12; 15.0 (Rev.) (CP) at 4; AIC Init. Br. at 13-14.)

IIEC/CUB claims later in brief that "AIC has failed to prove the prudence of its actions in negotiating services and costs for AMS for services provided." (IIEC/CUB Init. Br. at 9). Yet again, IIEC/CUB is wrong. AIC's direct testimony explained how AIC evaluates, processes, and controls AMS services and their costs. (Ameren Ex. 2.0 (Rev.) at 15-16; AIC Init. Br. at 7.) And AIC's 2015 buyers' Joint Planning Checklists, which document discussions between AIC buyers and AMS providers for projected 2015 AMS services and costs and show "the prudence of its actions in negotiating services and costs for AMS for services provided." (Ameren Ex. 15.0

(Rev.) (CP) at 12; IIEC/CUB Init. Br. at 9.)

The 2015 Joint Planning Checklists show, for example, that on July 14, 2014, AIC and AMS personnel met to discuss AIC's increased IT design administration needs and projected budget. (IIEC/CUB Ex. 2.4 (IIEC-CUB 2.08 Attach 1 at 33-34).) The meeting notes reflect that AMS outsources several of the needed IT services, such as 7x24 threat recognition services, that the projected increase in AMS costs charged to AIC in 2015 for those IT services are related to compliance with NERC Critical Infrastructure Program requirements, and that the "Ameren cyber security program is routinely re-assessed based on a constantly changing threat landscape. As investments are made to strengthen Ameren's cyber security, program operating expenses are expected to increase for the next 2-3 years." (*Id*. at 34.)

The 2015 Joint Planning Checklists also show that on July 7, 2014, AIC and AMS personnel met to discuss AIC's increased need for another IT service—Application Development Services. (*Id*. at 35-36.) The meeting notes explain how AMS costs for those services are managed:

> When staff augmentation is utilized, the ASC/IT engages a third-party vendor-neutral manager of contract staffing. They work directly with multiple vendors to ensure that staff augmentation costs are appropriate and potential consultants will satisfy the specific need.
>
> When project specific professional services are required, ASC/IT engages with the Ameren Sourcing department to issue Request for Proposals (RFP) in order to ensure best pricing considerations are made as part of the overall sourcing decision.
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>
> Note: This service is routinely evaluated to ensure it is delivered at a competitive price that strikes a balance with the value delivered to the business segment. As part of this evaluation, right-sourcing, whether that be out-sourcing or in-sourcing is considered.

(*Id*. at 35.) The notes further describe the factors that contributed to the increase in projected 2015 costs for AMS IT Application Development Services over the 2014 level: "Labor rate increases (which includes labor overheads); Increased expense based on project load (more application upgrades planned for this calendar year than previous year); [and] Reallocation of labor costs from Capital in 2014 to O&M in 2015 due to differing project loads across the Development groups." (*Id.* at 36.)

AIC provided evidence rebutting every claim and concern that IIEC/CUB witness Mr. Gorman raised in testimony. The Commission should disregard IIEC/CUB's statements in initial brief to the contrary.

The Commission also should not lose sight that these statements are irrelevant. As explained, IIEC/CUB proposes only two adjustments. Both adjustments relate to total AMS costs allocated to AIC and its affiliates. The adjustments don't relate to "any specific service or category of services." (IIEC/CUB Init. Br. at 2.) They don't relate to whether AMS services may be obtained "more economically by providing such services in house or through an independent third party." (*Id.*) They don't relate to AIC's prudence "in negotiating services and costs for AMS for services provided." (*Id.* at 9.) Since IIEC/CUB does not propose to adjust $66.6 million of AIC's 2015 AMS charges (*see supra* § II.A.1.a), all of IIEC/CUB's generalized complaints about evidence of prudence and reasonableness are irrelevant.

c. IIEC/CUB waived its argument that AIC has "attempt[ed] to reverse the burden of proof."

Legal arguments must be supported by legal authority. *See* Ill. Sup. Ct. R. 341(h)(7) (legal briefs must contain "[a]rgument, which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on"). Arguments not supported by legal authority are waived. *See, e.g.*, *Fuller v. Justice*, 117 Ill. App. 3d 933, 942-43 (2d. Dist. 1983) ("The well-established rule is that bare contentions without argument or citation of authority do not merit consideration on appeal. Moreover, it has also been held that contentions supported by some argument, but by absolutely no authority do not meet the requirements of Supreme Court Rule 341. . . . Since plaintiff has failed to offer more than conclusory arguments . . . we would be justified in considering her argument waived.”).

In initial brief, IIEC/CUB ignores its burden under EIMA to state its AMS cost adjustments with particularity and to support those adjustments with evidence. (IIEC/CUB Init. Br. at 1, 2, 13-15); 220 ILCS 5/16-108.5(d)(3). Instead, IIEC/CUB argues that EIMA places the burden of proof in this case “squarely on” AIC, and that AIC has attempted to shift that burden to IIEC/CUB. (IIEC/CUB Init. Br. at 3, 13-15.) IIEC/CUB fails to cite legal authority for its argument that AIC alones bears the burden of proof. (*See generally id*. at 13-15.) And IIEC/CUB fails to offer any authority that would excuse IIEC/CUB from the burden to support its claims and allegations in this case. Therefore, IIEC/CUB has waived any argument that AIC failed to meet the undefined legal burden to which IIEC/CUB alludes in initial brief. *See, e.g.*, *Ill. Commerce Comm’n on its own Mtn.*, Docket 01-0539, First Notice Order at 53-54 (Jan. 7, 2004) (holding that the Commission “cannot consider” an argument where the proponent “cites no legal authority in support if its argument”); *Citizens Util. Bd.*, Docket 03-0592, Order at 29-30 (July 21, 2004) (finding, where the proponent “cites no legal authority in support of its contention,” the proponent “has waived its right to assert this argument and we will not consider it”); *see also People v. Sutton*, 375 Ill. App. 3d 889, 895 (1st Dist. 2007) (holding, where defendant “cite[d] no legal authority supporting his assertion,” defendant’s argument was “deemed waived and need not be addressed on appeal.”).

An opposing party cannot unilaterally determine what evidence is enough evidence. This is noteworthy here because of the recurring and undefined “lack of evidence” theme in IIEC/CUB’s initial brief. Without any supporting authority, IIEC/CUB’s argument is not legal, but rhetorical. Therefore, the Commission may, and should, disregard it.

d. Even if IIEC/CUB hasn't waived its argument on burden of proof, IIEC/CUB misunderstands what its legal burden is.

IIEC/CUB asserts that EIMA "places the burden to justify the justness and reasonableness of proposed rates *squarely* on" AIC. (IIEC/CUB Init. Br. at 3 (emphasis added).) This reflects a misunderstanding of IIEC/CUB's burden to support its adjustments.

As AIC explained in initial brief, under Illinois law, once a utility has supplied the cost data underlying its proposed rates, the burden of proof shifts to other parties to support any adjustments to those costs. (AIC Init. Br. at 5-7.) EIMA could not be clearer on this point: "During the course of the hearing, each objection shall be stated with particularity and evidence provided in support thereof, after which the utility shall have the opportunity to rebut the evidence." 220 ILCS 5/16-108.5(d)(3); *see also, e.g.*, *Ameren Ill. Co*., Docket 15-0305, Order at 46 (Dec. 9, 2015) ("In other words, while the burden to establish the reasonableness of an expense is initially on the utility, it shifts to the party proposing the adjustment [to that expense]. . . ."); *Apple Canyon Lake Prop. Owners' Ass'n v. Ill. Commerce Comm'n*, 2013 IL App (3d) 100832, ¶ 54 (Mar. 5, 2013) ("Once a utility makes a showing of the costs necessary to provide service under its proposed charges, it has established a *prima facie* case, and '[t]he burden then shifts to others to show that the costs incurred by the utility are unreasonable because of inefficiency or bad faith.'") (quoting *Ill. Bell Tele. Co. v. Ill. Commerce Comm'n*, 327 Ill. App. 3d 768, 776 (3d Dist. 2008)).

As AIC explained in initial brief, AIC's direct filing included EIMA and Part 285 schedules and testimony that satisfied its initial burden to prove its 2015 costs of electric distribution service, including its 2015 AMS charges. (AIC Init. Br. at 7-9.) This shifted the burden of proof to IIEC/CUB. (*Id*. at 5-7.) IIEC/CUB failed to meet that burden. (*Id*. at 9-12.)

The Commission may reject IIEC/CUB's AMS cost adjustments on this basis alone.

IIEC/CUB also misunderstands AIC's legal burdens in two additional ways. First, IIEC/CUB thinks that AIC must prove the reasonableness of costs that are not related to AIC. (*See* IIEC/CUB Init. Br. at 7 (arguing that AIC did not "justify the reasonableness of costs AMS incurred in 2014 for providing divestiture services to Ameren Corporation . . . ."). This is something that AIC is not required to do. 220 ILCS 5/7-101(2)(ii) (prohibiting Commission access to information regarding affiliate transactions not related to the gas or electric utility). Second, IIEC/CUB argues that AIC should be required to prove that it did not somehow receive AMS services or costs it should not have received. (*See, e.g.* IIEC/CUB Init. at 10.) AIC, however, is not required to prove a negative. *See, e.g., Antioch Milling Co. v. Pub. Serv. Co.*, 4 Ill. 2d 200, 209 (1954) (holding a utility is not required to embark upon a full dress justification of its rate structure); *Ethyl Corp. v. EPA*, 51 F.3d 1053, 1064 (D.C. Cir. 1995) (upholding agency decision rejecting interpretation of "burden of proof [that] would be virtually impossible for an applicant to meet, as it requires the proof of a negative proposition").

It is not AIC's burden to disprove IIEC/CUB's unsupported allegations. Rather, IIEC/CUB bears the burden to support its adjustments—with particularly and with evidence—which IIEC/CUB has not done.

e. AIC provided IIEC/CUB extensive AMS cost data; apparently, IIEC/CUB's witness did not use it.

Perhaps in an effort to excuse its failure to support its AMS cost adjustments with particularity and evidence as EIMA requires, 220 ILCS 5/16-108.5(d)(3), IIEC/CUB repeatedly accuses AIC of not providing AMS cost data. (*See, e.g.*, IIEC/CUB Init. Br. at 10, 13, 14, 15.) IIEC/CUB's accusations are at best misleading. AIC provided IIEC/CUB—and all the parties to this proceeding—extensive AMS cost data. But, despite all of Mr. Gorman's touted qualifications (*id*. at 2), he apparently either did not engage with that data, or he chose to ignore it.

IIEC/CUB asserts, for example, that AIC's "responses to data requests were not adequate to allow for a critical review of the reasonableness of the AMS costs charged to AIC." (*Id*. at 10.) The failure to undertake a critical review, however, is Mr. Gorman's. AIC provided IIEC/CUB extensive information in support of its AMS costs, including:

- a detailed report, in native Excel format that can be pivoted and sorted, of all monthly AMS charges to AIC and other affiliates in 2015, including 25,595 rows of AMS services and cost data broken down by affiliate, description of each service provided by project name/service request name and number, allocation factor used, allocation factor name, service request type (i.e., direct, indirect allocated), FERC Major/Minor account, utility split, and labor/non-labor split (IIEC 2.01(d), (e); MHE 3.03 Attach 2);

- detailed calculations of and explanations for all allocation factors used to allocate AMS costs to AIC and other affiliates in 2015, including an Excel spreadsheet in native format with 52 tabs, one for each 2015 allocation factor (IIEC 2.01(a), (c));

- an explanation for how a specific allocation factor is determined to be used for a specific service (IIEC 2.01(d));

- a summary report of total 2015 AMS costs allocated to AIC and other affiliates, broken-down by AMS functional area (IIEC 2.01(b));

- a reconciliation of 2015 AMS costs charged to AIC as reported on FERC Form 60 and IL Form 21, and descriptions of how AIC reports AMS costs in FERC Form 1 and IL Form 21 (IIEC 2.01(c), IIEC 2.01 Attach, IIEC 2.07(c), (d));

- the total amount of AMS costs charged to AIC and each affiliate in 2015, including the total amounts that are direct charges and the total amounts that are allocated charges (IIEC 2.05);

- a detailed explanation of how AMS costs charged to AIC are distributed between AIC's retail distribution and federal transmission costs of service (IIEC 2.07(a));

- sample journal entries to AIC's books, containing Uniform System of Accounts names and numbers and transaction descriptions for AMS charges to AIC, both for direct and allocated costs (IIEC 2.07(b));

- a description of how AIC reviews Business and Corporate Services (B&CS) costs each month, which are the source of most AMS expenses, and a detailed report of

B&CS cost variances as of December 2015, including labor and expenses charged to AMS and allocated to AIC and external expenses directly charged to AIC (IIEC 2.08(a), (c), IIEC 2.08 Attach 2);

- 66 pages of AIC buyers' checklists, which document discussions between AIC 153 buyers and AMS providers for projected 2015 expenses (IIEC 2.08(b));
- definitions for and specific examples of "indirect overhead costs" and "general overhead" costs, and descriptions of how those costs are allocated at the account level (IIEC 2.09).
- detailed data support for the $5.5 million increase in AMS costs charged to AIC 2014-2015, including a native Excel file that can be pivoted and sorted, which contains 46,292 rows of 2014 and 2015 AMS costs charged to AIC (IIEC-CUB 2.04, IIEC-CUB 2.04 Attach);
- detail regarding the project names and costs comprising the $7.3 million AMS divestiture-specific services costs charged to Ameren Corporation in 2014 (IIEC-CUB 2.05R; also provided with AIC's rebuttal filing as "Russi Testimony 12.0 Workpaper Support.xls");
- all AMS IT services costs allocated to ATC in 2015, including a description of the services provided, the applicable allocation factor, and a break-down of costs by direct assigned, direct allocated, or indirect costs, supported by a native Excel file, which can be pivoted and sorted, containing over 400 rows of data with each AMS IT service to ATC, by project name/service request number, functional area providing the service (Information Technology or IT), allocation factor, service request type, and labor/non-labor split; for all direct assigned costs, an explanation of how the costs align with service requests by ATC; and for all indirect and/or direct allocated costs, the allocation factor used to assign costs to ATC (IIEC-CUB 2.06, IIEC-CUB 2.06 Attach); and
- variance analyses of all 2014 to 2015 Administrative and General expenses by FERC account and of 2014 to 2015 AMS charges by FERC Account (with the labor/non-labor) split.

(Ameren Exs. 15.0 (Rev.) (CP) at 6-8; 2.0 (Rev.) at 17-20; 15.2.)

Nevertheless, IIEC/CUB argues, Mr. Gorman needed "a complete list of all the AMS services provided to AIC in 2015 and prior years, to allow for a variance assessment of the cost for each of the AMS services provided in 2015 to the services and costs provided in 2014. This more detailed variance analysis is needed to confirm each service provided by AIC from AMS was prudent in 2015 and the charge from AMS to AIC for each service provided was reasonable." (IIEC/CUB Init. Br. at 15.) (Mr. Gorman asked for this variance analysis for the first time in his rebuttal testimony. (*See* Ameren Ex. 15.0 (Rev.) (CP) at 14).)

AIC provided the information that IIEC/CUB says it needed. As explained, in discovery, AIC gave Mr. Gorman *every* 2014 and 2015 AMS charge to AIC, including a description of the service provided, the attendant cost to AIC, whether the cost was direct charged or direct allocated, the allocation factor used, the FERC account to which the charge was recorded, the jurisdictional operations to which the charge was attributed, and whether the charge was for AMS labor or non-labor (labor benefits, outsourced services, and other expenses) services. (*Id.* at 6, 15; IIEC/CUB Cross Exs. 1 (AIC's response to IIEC-CUB 2.04); 3 (AIC's response to MHE 3.03).) Importantly, AIC provided Mr. Gorman that cost data in native Excel format with field lists and pivot tables—meaning that Mr. Gorman could sort and compare the data as needed. (Tr. at 36-37; Ameren Ex. 15.0 (Rev.) (CP) at 6, 7, 15.)

Moreover, AIC satisfied Mr. Gorman's request for an AMS cost variance assessment by FERC account. (Ameren Ex. 15.0 (Rev.) (CP) at 14-15.) AIC sorted and compared the 2014 and 2015 AMS cost data it had already provided IIEC/CUB to create a variance analysis of AMS costs by FERC Account. (*Id*. at 14-17; 15.2.) That variance analysis simply confirmed what AIC had already explained: the 3.5% increase in AMS costs charged to AIC from 2014 to 2015 was due to inflation, increases in AMS employees' wages and salaries, and increases in the specific services that AIC requires, such as increased IT support for cyber security. (Ameren Exs. 15.0 (Rev.) (CP) at 16; 15.2.)

Still, IIEC/CUB repeatedly claims that AIC "refused" to provide information to enable Mr. Gorman to analyze AIC's 2015 AMS charges. (IIEC/CUB Init. Br. at 13, 14.) What IIEC/CUB characterizes as "refusals" to provide information, however, were actually proper legal objections to improper data requests. (Ameren Ex. 15.0 (Rev.) (CP) at 11, 13.) The Commission's rules and the ALJ's Case Management Order in this case provide a process to resolve discovery disputes. *See* 83 Ill. Admin. Code 200.350 (requiring consultation among parties and "reasonable attempts to resolve differences" regarding discovery); 83 Ill. Admin. Code 200.370; Case Mgmt. Order at II.A (filed May 5, 2016); Tr. at 6-9 (entering order)).

If IIEC/CUB disagreed with AIC's objections, it was incumbent upon IIEC/CUB to follow those dispute resolution procedures. IIEC/CUB did not. (Ameren Ex. 15.0 (Rev.) (CP) at 13.) Absent such effort, IIEC/CUB may not claim that AIC "refused" to provide any information. *See, e.g.*, *Ill.-Am. Water Co.*, Docket 11-0767, Order at 183 (Sept. 19, 2012) (noting that although Staff complained of the utility's failure to provide information, Staff had not followed established procedures to compel discovery, and rejecting Staff's position).

IIEC/CUB and its witness Mr. Gorman had substantial AMS cost data. AIC does not know what Mr. Gorman did with that data. AIC only knows that IIEC/CUB's claims that Mr. Gorman lacked the data necessary to assess AMS costs are false. Any lack of understanding of the data (or effort to engage with it) cannot serve as the basis for a cost disallowance.

f. IIEC/CUB's brief routinely mischaracterizes the record evidence.

As explained, IIEC/CUB wrongly claims that AIC provided "no evidence" on certain topics (ones that are irrelevant to IIEC/CUB's two AMS cost adjustments). (*See supra* § II.A.1.b.) Those aren't the only mischaracterizations of the evidentiary record in IIEC/CUB's initial brief.

IIEC/CUB declares, for example, that "the services provided to AIC by AMS have not materially changed since 2013." (IIEC/CUB Init. Br. at 5, 12.) But the record evidence plainly demonstrates that the services provided by AMS may fluctuate from year to year, based on

AIC's business needs. (Ameren Exs. 12.0 at 13-14; 15.0 (Rev.) (CP) at 17.) Services directly related to AMI support, for example, doubled from 2013 to 2015. And, in 2015, AIC required new AMS IT services related to the new bill format required by Part 280. (Ameren Ex. 12.0 at 13-14.) In 2014, AIC had 849 service request projects with AMS; in 2015, it had 910, 635 of which were also charged in 2014. (Ameren Ex. 15.0 (Rev.) (CP) at 17.) Some services reoccur year-over-year. Some are new. (*Id.*)

IIEC/CUB also asserts that Ameren witness "Ms. Russi does not identify other factors," beyond compliance with the Commission-approved GSA (which IIEC/CUB does not dispute), to consider in assessing the prudence and reasonableness of AMS costs. (IIEC/CUB Init. Br. at 9.) IIEC/CUB never asked Ms. Russi to identify "other factors," however. (*Id.* at 24-25.) Nor did she need to. The Commission must determine the prudence and reasonableness of costs based on the evidence before it. 220 ILCS 5/10-103; 220 ILCS 5/10-201(e)(iv). There is no general prescription on what form that evidence must take; the evidence that supports the prudence and reasonableness of a cost may depend on the cost and the case.

In this case, the substantial weight of the record evidence supports the prudence and reasonableness of AIC's 2015 AMS charges. That record evidence includes several rounds of testimonial evidence explaining how AIC evaluates, processes, and controls AMS services generally, AIC's 2015 AMS charges specifically, and the reasons for the 3.5% increase in those charges from the 2014 cost level. It also includes variance analyses of all of AIC's 2014 to 2015 administrative and general expenses, and of just its AMS charges, by FERC account. (*See* AIC Init. Br. at 3-5, 13-15.) The record also includes evidence demonstrating all the factual flaws underlying IIEC/CUB's adjustments. (*See id*. at 16-20; *see also generally* Ameren Exs. 12.0; 15.0 (Rev.) (CP); 14.0 (CP) at 3-4 (explaining Mr. Gorman's calculation errors).) And the record evidence includes benchmarking analyses that demonstrate that AIC's Administrative and General expenses, regardless of their source, are consistently lower than the expenses of AIC's utility peers. (Ameren Init. Br. at 14-15; *see also generally* Ameren Exs. 13.0; 13.1-13.7; 16.0.)

Thus, the Commission should consider IIEC/CUB's initial brief—and the myriad mischaracterizations of the evidentiary record in that brief—with caution.

g. IIEC/CUB's criticism of AIC's benchmarking analysis is unfounded.

The evidentiary record includes benchmarking analyses that demonstrate that AIC's Administrative and General expenses—a substantial portion of which are composed of AMS charges—are consistently lower than AIC's utility peers' expenses. (Ameren Init. Br. at 14-15; *see also generally* Ameren Exs. 13.0; 13.1-13.7; 16.0.)

Ameren witness Mr. Adams' benchmarking analyses compared AIC's 2014 and 2015 Administrative and General and AIC's general non-fuel Operating and Maintenance expenses, on a per-customer basis, to the expenses of AIC's national and Midwest peers. (*See generally* Ameren Exs. 13.0; 13.1-13.7.) Mr. Adams' analyses show that AIC's costs incurred to obtain the services it needs to operate were in the first and second quartiles compared to the group average in 31 out of 32 comparison groups in 2014 and 2015. (Ameren Ex. 16.0 at 4-5.)

IIEC/CUB criticizes AIC's benchmarking analyses. (IIEC/CUB Init. Br. at 11-13.) IIEC/CUB's criticism is unfounded, in three respects.

First, it is inaccurate. IIEC/CUB claims that AIC's analyses "do[] not justify the level of AMS costs." (IIEC/CUB Init. Br. at 11.) However, like other utilities, AIC must obtain the services that it needs to operate from somewhere: internally within AIC, from nonaffiliated vendors, or from a centralized service company—AMS. (Ameren Exs. 15.0 (Rev) (CP) at 18; 16.0 at 3.) AIC's benchmarking analyses confirm that, regardless of their source, AIC's

Administrative and General expenses compare favorably to the Administrative and General expenses of its utility peers. (Ameren Exs. 13.0 at 3-4, 10; 15.0 (Rev) (CP) at 18; 16.0 at 3; *see also* AIC Init. Br. at 14-15.)

Second, IIEC/CUB's criticism is disingenuous. IIEC/CUB asserts that AIC's analyses are "not useful" and that "a non-fuel O&M and Total A&G cost comparison is a deficient methodology . . . ." (IIEC/CUB Init. Br. at 11.) Yet, in the next breath, IIEC/CUB states that "the benchmarking analysis can instead be used to illustrate that the increasing amount of AMS charges to AIC are increasing AIC's cost relative to other electric utilities." (*Id*. at 12.) IIEC/CUB then explains that its witness Mr. Gorman expanded AIC's benchmarking analysis, adding 2012 and 2013 data, in an (unsuccessful) attempt to show that "AIC's costs will eventually be among the more expensive utilities." (IIEC/CUB Exs. 2.0 at 23; 2.8; IIEC/CUB Init. Br. at 12.) That is, IIEC/CUB argues on one hand that AIC's methodology is "not useful," and on the other, that the methodology supports IIEC/CUB.

Third, IIEC/CUB's criticism is undermined by Mr. Gorman's own expanded benchmarking analysis, the results of which are similar to Mr. Adams' analyses. Going back to 2012, Mr. Gorman makes 96 comparisons. In 85 of those comparisons, AIC's cost per customer ranked in the first or second quartile. (Ameren Ex. 16.0 at 5.) Further, Mr. Gorman's conclusion that "AIC's costs will eventually be among the more expensive utilities" is unsupported by any mathematical analysis of the numbers in his study or any demonstration of an actual trend. (*Id*. at 5.) Regardless, AIC's Administrative and General cost per customer ranges between 50 and 79 percent of the peer group mean in the period of Mr. Gorman's expanded analysis. This means that not only are AIC's costs *not* "among the more expensive utilities," but also, they are consistently well below the group mean during the period of Mr. Gorman's analysis. (*Id*. at 6.)

AIC's continued performance relative to even the group mean of its peer companies belies Mr. Gorman's conclusion. (*Id*.)

IIEC/CUB concludes that Mr. Gorman's expanded benchmarking analysis shows "the reduction in the number of Client Companies to which AMS provides service over the last four years has resulted in an *increased* cost of services for all remaining AMS Client Companies including AIC." (IIEC/CUB Init. Br. at 13 (emphasis sic).) But both AIC's original and Mr. Gorman's expanded benchmarking analyses look at total costs. Therefore, they do not provide a basis for any conclusions about specific changes to specific expenses from year to year. (Ameren Ex. 16.0 at 6.) And, as explained, the reasons for the 3.5% increase in AMS costs charged to AIC from 2014 to 2015—inflation, employee wages increases, specific business needs, particularly increased IT support—are independent of the reason for the decrease in AMS costs charged to Ameren Corporation in 2014 to 2015—the completion of the merchant generation divestiture. (*See supra* § II.A.1.a.i; AIC Init. Br. at 13-17.)

Regardless, IIEC/CUB's conclusion here is undermined by its conclusion that AIC's benchmarking analyses are "not useful": if the study somehow confirms IIEC/CUB's position, then it's useful for assessing the reasonableness of AIC's 2015 AMS charges. And, it is both useful and compelling to demonstrate how AIC's administrative and general expenses, including AMS costs, compare favorably year over year to peer utilities.

h. IIEC/CUB attempts to revive evidence that the ALJ already struck as irrelevant.

The purpose of this proceeding is to update AIC's electric formula rate for 2015 costs, per EIMA. 220 ILCS 5/16-108.5(d); (*see generally* AIC's Ver. Pet. (filed Apr. 15, 2016)). Accordingly, the ALJ struck as irrelevant portions of IIEC/CUB's direct evidence addressing 2013 and 2014 AMS costs. (Notice of ALJ Ruling (July 21, 2016) (finding that the offending portions Mr. Gorman's direct testimony "constitute[d] a collateral attack on the Commission's 2013 and 2014 proceedings under the Energy Infrastructure Modernization Act, and is therefore outside the scope of this proceeding, pursuant to Section 6-108.5(d)(3) of the Public Utilities Act.").) Over IIEC/CUB's objection, the Commission affirmed the ALJ's ruling. (IIEC/CUB Pet. Interloc. Review (filed July 28, 2016); Notice of Comm'n Action (Aug. 24, 2016).)

Among the stricken evidence was this sentence: "From 2013 to 2014, while AIC was experiencing a $28.2 million, or 22% increase in AMS cost, the amount charged to Ameren Corporation was declining by $9.7 million, or 33%." (IIEC/CUB Ex. 1.0 (CP) at 10:163-65 (filed June 30, 2016); Notice of ALJ Ruling (July 21, 2016).) Remarkably, in initial brief, IIEC/CUB reinserts into the record of this proceeding what the ALJ has already taken out: "The amount of AMS cost charged to Ameren Corporation declined by $5.2 million, or 27%, from 2014 to 2015. This is in addition to a $9.7 million, or 33%, decline in AMS costs charged to Ameren Corporation from 2013 to 2014." (IIEC/CUB Init. Br. at 6.) The extent of IIEC/CUB's effort to include this information in brief—without the benefit of record support—is revealed in the convoluted mathematical exercise IIEC/CUB undertakes in the footnote to these sentences, which calculates a reversal of costs back to the 2013 level. (*Id*. at 6, n.2.)

The Commission has already rejected IIEC/CUB's attempt to revisit 2014 cost levels previously approved. (Notice of Comm'n Action (Aug. 24, 2016).) Further, the Commission has already rejected IIEC/CUB's legal arguments that it should consider the increase in total AMS costs from 2013 to 2014. The Commission has agreed with AIC that IIEC/CUB's failure to address that increase in Docket 15-0305 is not a basis for allowing the issue in this case. (*See generally* AIC's Ver. Opp. (filed Aug. 4, 2016).) As AIC has explained, in Docket 15-0305, AIC's direct testimony expressly explained the basis for increased AMS costs allocated to AIC in 2014—testimony that addressed the very allegations about the divestiture of Ameren Corporation's merchant generation business that IIEC/CUB now raises, untimely. The Commission approved an updated revenue requirement in Docket 15-0305 that included the increased 2014 AMS costs. EIMA simply does not allow IIEC/CUB a second opportunity to challenge a cost where it failed to challenge it before. (*Id*. at 6, 9.)

In sum, IIEC/CUB's two AMS cost adjustments are factually and legally baseless. There is nothing in the record or the law to support them. So, IIEC/CUB employs a number of alternative tactics—mischaracterizations of the record, misstatements of the parties' legal burdens, misrepresentations of the discovery—in an attempt to salvage its adjustments. These tactics should be discarded.

For all the reasons explained in AIC's initial brief and in this reply, the Commission should reject IIEC/CUB's adjustments to AIC's 2015 AMS charges.

2. Attorney General Advertising Expense Adjustments

The primary design of an advertisement determines whether the related expense should be recoverable in a utility's delivery rates. And to assess that primary design, one must look at the factors that influence it. The stated purpose of the communication, the targeted audience, the nature of the public event, the substance of the message, the visual graphics displayed, the audio components, and the duration and channel of publication—these factors combine to generate the final product and provide the necessary context to explain why the advertisement was created.

Simply put, the AG's initial brief, in continuing to seek the exclusion of expenses for messages on avian protection, workplace diversity, and EIMA infrastructure projects, ignores that context. The AG's brief—much of which is new analysis in the absence of proper rebuttal—picks at the justifications that AIC provided in its rebuttal testimony, without due consideration given to why the materials were published or displayed. It disbelieves the use of pamphlets, posters and banners on endangered birds at presentations at public schools and safety events. It discounts the need and effectiveness of advertisements that seek to promote a diverse and respectful culture in recruiting and retaining employees. It disregards the importance of informing and engaging customers on AIC's efforts to fulfill its EIMA investment requirements.

The AG's brief suggests that the challenged advertisements are not informative enough, that they could have said more. That the AG, in briefing, can come up with additional facts that AIC did not include in the advertisement, however, is not decisive. The AG's hypothetical ads do not justify the exclusion of the expense of the actual ads. An advertisement is not goodwill simply because the AG feels that it can design a better one, in hindsight. The recoverability of the expense does not turn on the advertisement that the AG says could have been produced. The recoverability of the expense turns on the primary design of the advertisement that actually was produced. The evidence in the record in this proceeding shows that the primary design of the challenged advertisements was not to improve AIC's image; the primary design was to inform the public on avian protection, workplace diversity and EIMA infrastructure projects.

a. No other party to this proceeding, including Staff, endorses the AG's additional adjustments to advertising expense.

AIC's initial brief detailed the effort undertaken to review the 2015 advertisements and the related production and publication expenses. (AIC Init. Br. at 21-23.) As the initial brief notes, the result of that review was a significant self-disallowance of 2015 advertising expenses in the amount of $600,000. (*Id*. at 23.) AIC also excluded $163,000 in corporate sponsorship expense. (*Id*.) In addition to those adjustments, AIC accepted Staff and the AG's adjustments to remove $21,000 in expenses for charitable advertisements. (*Id*. at 23, 31.) This total is the appropriate amount of advertising expense to exclude from the revenue requirement, and it includes expenses to publish the "Stronger" and "Preparation" ads at issue in Docket 15-0305.

AIC does not accept the AG's remaining three adjustments to exclude other expenses for communications that inform and educate the public about avian protection ($12,000), workplace diversity ($53,000) and EIMA infrastructure improvements ($105,000). And no other party to this proceeding, including Staff, has endorsed these additional adjustments. The testimony and exhibits in the record do not establish that the specific communications targeted by the AG were primarily designed to improve AIC's image. And the new, speculative analysis in the AG's initial brief, even if it had been timely included in the record as proper rebuttal, does not change the outcome. The Commission should not disallow expenses that AIC incurred to alert the public to the benefits of the avian protection program, workplace diversity and EIMA infrastructure projects.

b. The AG introduces new analysis that it should have filed as rebuttal testimony in response to Mr. Kennedy's rebuttal.

Both Staff and the AG filed direct testimony in support of advertising adjustments. And AIC submitted rebuttal testimony in response, accepting the parties' adjustments for charitable advertising. For each of the three other categorical AG adjustments that AIC opposed however, the Company submitted testimony that described the necessity of the messages, identified the purpose and design of the specific advertisements at issue, and explained why the particular type of advertising did not serve only to enhance AIC's image. (Ameren Ex. 11.0 at 12-25.)

The AG could have rebutted AIC's rebuttal evidence. It could have sent additional discovery on AIC's stated justifications. But it didn't. No data requests were issued after AIC filed Mr. Kennedy's rebuttal. Nor did Mr. Brosch file rebuttal in response. It is improper for the AG to now raise issues in briefing that should have been raised in rebuttal testimony. If the AG questioned the design of an advertisement or wondered about the basis of a justification, the appropriate line of inquiry would have been through discovery and responsive testimony. AIC then would have had the opportunity to respond in discovery or surrebuttal with additional, clarifying information or evidence. Instead, the AG laid in wait to spring its questions in briefing. AIC should not be penalized because it no longer has the opportunity to address the AG's new concerns.

c. The AG's evidence in the record does not establish that the advertisements were designed primarily to improve AIC's image.

In Docket 15-0305, the Commission elaborated on the burden that must be met to support the disallowance of an advertising expense. "The Act requires that for each of the disallowed categories of advertising, there must be sufficient evidence in the record on the 'purpose' or 'design' of the advertisement." *Ameren Ill. Co.*, Docket 15-0305, Order at 46 (Dec. 9, 2015). "[T]he party proposing the adjustment to a 'goodwill' advertisement must show that 'the promotional aspect of the advertisement outweighs the message of the advertisement.'" *Id.*, *quoting ComEd*, Docket 11-0721, Order at 102, (May 29, 2012). "In other words, while the burden to establish the reasonableness of an expense is initially on the utility, it shifts to the party proposing the adjustment … to establish that the ads were 'designed primarily' to improve the image of the utility." *Id*. The evidence must show that the main purpose of the challenged advertising was to promote AIC's image. *Id*. That the advertisement may provide a favorable impact to the utility's image, which was ancillary to the message, is not determinative. *Id*.

In this proceeding, the AG has failed to meet its burden. In each instance, the evidence in the record shows that the challenged advertisements were created for a legitimate business purpose. The posters, brochure and banners for avian protection were displayed at public school demonstrations and outreach events on electric safety that AIC had been invited to attend. (Ameren Ex. 11.0 at 13-14.) The print advertisements on diversity and respect in the workplace served as recruitment tools. (*Id*. at 17-19.) The digital, print and video advertisements on EIMA reliability investments targeted customers in particular areas to increase awareness of grid improvements. (*Id*. at 22-23.) The AG has not identified sufficient credible evidence that these materials were primarily designed to improve AIC's image. Granted, the AG believes that their content is lacking. But these comments amount to subjective armchair quarterbacking; they do not satisfy the AG's burden to show that the ads were primarily designed as image enhancing.

i. The avian protection materials are designed to educate the public about the effect of bird interference on reliability.

AIC's initial brief presented the record evidence that showed the primary design of the avian protection materials—to assist in the education of the public on actions that can be taken to improve the safety and reliability of its structures at risk of damage caused by birds of prey. (AIC Init. Br. at 24-25.) The materials include a poster that illustrates and describes the equipment used to help protect birds of prey from dangers associated with overhead power lines. (Ameren Ex. 11.0 at 13.) There is a brochure that describes AIC's efforts to make structures safer for birds of prey and reduce outages from bird interference. (*Id*.) And there are banners that depict the protected birds. (*Id*. at 14.) These materials were made available at tables at public schools and outreach events on electric safety—demonstrations that AIC was invited to attend. (*Id*. at 13-14.) These materials concern the utility's responsibilities regarding "service interruptions [and] safety measures." 220 ILCS 5/9-225(3)(c). These materials do not constitute a concerted, covert plan to enhance AIC's "environmental reputation." (AIC Init. Br. at 14.)

The AG, however, refuses to believe that the materials are educational, claiming that they lack essential information. The AG believes that there should be more information on the impact of avian protection upon the construction of distribution facilities. (AG Init. Br. at 9.) The AG wants to see proof of problems from bird interference and that electric facilities endanger birds.

(*Id*. at 10-11.) The AG faults AIC for not providing the actual requests from outside entities for AIC to attend public school demonstrations and outreach events. (*Id*.) And most incredibly, the AG claims that there is no evidence linking bird interference to service interruptions. (*Id*. at 11.)

If the AG remains skeptical about the dangers of bird interference to the safety and reliability of delivery service, these misgivings should have been presented in testimony, so that AIC could address them. But even these doubts do not satisfy the AG's burden to prove that the materials were primarily designed to improve AIC's image. The evidence in the record, which was not disputed, shows that AIC created materials to assist in the education of the public on the benefits of avian protection. Do these materials constitute an encyclopedia of knowledge on endangered birds? No. Must they provide that level of detail to be effective? Also, no. The circumstances surrounding the use of the materials matter. It is practical and reasonable to display these types of materials at a table or booth manned by AIC at a public event. That the AG can concoct more information that it would like to see included is not fatal to cost recovery.

ii. The employment advertisements are designed to recruit skilled employees and develop a diverse, inclusive culture.

AIC's initial brief also presented the record evidence that showed the primary design of the employment-related advertisements—to develop and maintain a culture in which employees are recruited, retained, respected, and recognized for their unique contributions to the success of the Company and the service of customers. (AIC Init. Br. at 24-25.) The materials include a series of print ads designed to promote and attract a high-quality, culturally-diverse workforce; these ads encouraged viewers to visit the Ameren.com/careers website to learn more about available opportunities. (Ameren Ex. 11.0 at 17-18.) AIC displayed these ads at various events and in newspapers, magazines, and program booklets to educate prospective employees on AIC's corporate values and career opportunities. (*Id*.) There also are ads on AIC's support for the

STEMpact educational programs and its commitment to diversity in its hiring practices and supplier selection. (*Id*. at 18-19.) And there also are interior signs and banners, both at Ameren Corporation's office in St. Louis and at the Research Park, University of Illinois at Urbana-Champaign, which seek to inspire employees and students. (*Id*. at 19-20.) These messages serve a legitimate business purpose—to recruit and retain a talented, diverse workforce.

The AG, however, remains dissatisfied with the quality of information included in the ads. The AG argues that the advertisements speak in general terms, without mentioning specific job openings. (AG Init. Br. at 13, 16.) The AG's brief argues that "generic celebrations of Ameren's commitment to diversity do not count as related to employment opportunities…." (*Id*. at 15.) Unfortunately, the AG believes that "respect for employees and a commitment a diverse workforce that mirrors the community" are "laudable goals" that "do not need to be advertised." (*Id*. at 16.)

The AG's position, namely that these advertisements do not concern "employment opportunities," simply is not tenable. 220 ILCS 5/9-225(3)(d). The "Respect" and "Diversity" ads refer their targeted audience to the webpage Ameren.com/careers. That the ads do not have information in real time on available job openings makes sense; these are print advertisements, not updated webpages. The ads are recruitment tools; that fact alone makes them employment-related. The lack of a job posting does not prove that the ad is designed to be image enhancing.

The AG's disallowance, however, does not just discount the importance of using the ads as recruitment tools. The AG's brief discounts the importance of promoting diversity in general. While the AG may discount the benefits of diversity however, AIC and the Commission do not. As Mr. Kennedy testifies, "We want to provide a full and fair opportunity for all prospective employees to pursue a career at Ameren Illinois, regardless of non-merit factors such as race, ethnicity or gender. We want to enable all employees to carry out their duties in the workplace, free from discrimination." (Ameren Ex. 11.0 at 16:355-58.) The Commission, through its Office of Diversity and Community Affairs, shares a similar goal: to develop and maintain a "culture of diversity and inclusion" in its workplace. *See* https://www.icc.illinois.gov/odca/. The Public Utilities Act recognizes that increasing diversity in suppliers is a legitimate business undertaking for utilities. 220 ILCS 5/5-117. The advertisements at issue promote equal opportunity for all employees, prospective employees and the public at large. The fact that AIC openly embraces diversity in hiring in no way shows that these ads are goodwill in nature.

iii. The EIMA advertisements are designed to inform customers in targeted areas on specific improvements.

AIC's initial brief also described the record evidence that showed the primary design of EIMA-related advertisements—to inform customers on infrastructure improvements to the electric distribution systems that are improving overall reliability (through fewer and shorter outages) and saving customers money. (AIC Init. Br. at 26-27.) The materials included digital banner display advertisements on improving reliability that link to specific AmerenIllinois.com webpages; the Commission previously allowed AIC to recover costs associated with these ads. (Ameren Ex. 11.0 at 22.) Other digital banner display advertisements, again linking to AIC's website, were designed to encourage customers to click for more information on projects improving reliability in specific communities. (*Id.*) Video advertisements described improved reliability and storm readiness. (*Id*. at 23.) And a print advertisement focused on infrastructure enhancement work in the Metro East area. (*Id.*) These ads share a common goal: to support a message of reliable energy service for customers and to raise their awareness of improvements to the electrical grid through Ameren Illinois' reliability initiatives. (*Id.*)

In Docket 15-0305, the Commission found that EIMA-related infrastructure improvement advertising qualifies for rate recovery. The Commission found that they have an educational purpose. They are not designed primarily to improve AIC's image. And they are also in the best interest of the consumer. In that proceeding, the AG, the Commission held, did not present enough evidence to show that the promotional aspects of the ads outweighs the ads' purpose of consumer education. "Because the AG has presented only conclusory statements, it has not shown that these ads are goodwill and, as such, has failed to meet its statutory burden." *Ameren Ill. Co.*, Docket 15-0305, Order at 47 (Dec. 9, 2015).

The Commission further found in Docket 15-0305 that "the record shows that the primary purpose of AIC's EIMA-related infrastructure improvement ad campaign is to educate customers, not to enhance the public image of AIC despite any ancillary benefits of this kind." *Id*. The ads are "designed primarily to inform and engage customers on AIC's efforts to fulfill its EIMA investment requirements," the Commission held. *Id*. The lack of familiarity with and knowledge of changes to the electrical grid "indicates a need for further education with respect to how EIMA regulations and infrastructure improvement projects impact customers." *Id*. at 48. Consumer education is "a critical component in the State's efforts to modernize electrical infrastructure, with an emphasis on the importance of such education in constructing a 21st century grid for Illinois." *Id*. And "it is important for Ameren customers to be informed of AIC's EIMA-related investments, their impact on system reliability, and the other customer benefits involved." *Id*.

The AG complains that the challenged advertisements "appear generally intended to extol Ameren's strong or improving reliability, without conveying any more specific details…." (AG Init. Br. at 18.) The advertisements do not discuss specific infrastructure projects, the AG says, and appear to feature “friendly imagery of Ameren personnel and physical assets.” (*Id*. at 19.)

The AG’s claim, namely that these particular EIMA advertisements make generalized claims that serve no legitimate business purpose, is not true. These EIMA advertisements are not a form of general advertising. They seek a direct response from consumers. (Ameren Ex. 11.0 at 24.) They target customers located in specific communities. (*Id*.) They inform customers about the increased spending to install infrastructure improvements to improve reliability in their specific communities. (*Id*.) They provide customers with an efficient and effective way to easily access more information about specific EIMA projects that affect service in their city or neighborhood. (*Id*.) Granted, they do not provide customers information on every aspect for current pending projects. And some may be of short duration. But the length of the ad and the level of detail included, in this instance, do not establish that the ad is image enhancing. The context of the ad matters. The point of digital ads matters. The placement of the print ad matters. The intended reach of the video ad matters. The hope is that customers who view these digital, video and print messages will take advantage of available online resources and customer convenience programs, and be better informed about how resources are being invested to improve the overall reliability of the energy grid. (*Id*.) This intention—to inform and engage customers on EIMA projects—makes the related expenses recoverable.

For the reasons given above, the Commission should reject the AG’s additional advertising adjustments. The record shows that the AG has not met its burden.

B. Uncontested or Resolved Issues

1. Stipulation

a. Rate Case Expense

b. Staff Advertising Adjustments

C. Recommended Operating Revenues and Expenses

2. **Filing Year**

3. **Reconciliation Year**

III. RATE BASE

A. Uncontested or Resolved Issues

1. Stipulation

a. Cash Working Capital

B. Original Cost Determination

C. Recommended Rate Base

1. Filing Year

2. Reconciliation Year

IV. COST OF CAPITAL AND RATE OF RETURN

A. Uncontested or Resolved Issues

1. Stipulation

a. Weighted Average Cost of Capital

B. Recommended Capital Structure, Cost of Capital, and Overall Rate of Return

1. Filing Year

a. Reconciliation Year

V. RECONCILIATION

VI. RECOMMENDED REVENUE REQUIREMENT

As AIC explained in its initial brief, AIC's recommended revenue requirement is shown on Ameren Exhibit 10.1, Schedule FR A-1, and its recommended revenue requirement for the reconciliation year is shown on Ameren Exhibit 10.0, Schedule FR A-1 REC. (AIC Init. Br. at 35.) Related AIC also explained its uncontested plant additions and referenced its Data Center Capacity Additions project. (*Id.*) AIC inadvertently, however, stated that capital dollars associated with that project were "excluded" from its reconciliation revenue requirement, rather than "included" in that revenue requirement. (*Id*.) The latter is correct. (*See* Ameren Ex. 10.0 at 7 (*cited in* AIC's Init. Br. at 35).) Again, no party contests inclusion of AIC's Data Center Capacity Additions project capital dollars in its reconciliation revenue requirement. (AIC Init. Br. at 35.)

VII. CONCLUSION

For all of the above reasons and those explained in its initial brief, Ameren Illinois Company d/b/a Ameren Illinois request that the Commission adopt the revenue requirement as proposed by Ameren Illinois Company.

Dated: October 11, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Albert D. Sturtevant, an attorney, certify that on October 11, 2016, I caused a copy of the foregoing *Ameren Illinois Company's Reply Brief* to be served by electronic mail to the individuals on the Commission's Service List for Docket 16-0262.

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